

REMARKS

Claims 7-9 have been amended for clarification purposes and claims 6 and 11-32 have been canceled. New claims 33-42 have been added. These amendments are not intended to narrow the scope of these claims. The claims have been rewritten to place them in better form for examination and to further obviate the 35 U.S.C. §§102, 103 and 112 rejections set forth in the Office Action dated January 30, 2003. It is believed that none of these amendments constitute new matter. Withdrawal of these rejections is requested.

Claims 1, 7, 9 and 18 are objected to for inclusion of a blank line where the ATCC Accession number should be. Applicant acknowledge the requirement for a deposit of biological material. Upon allowance of the claims in this application a seed deposit will be made with the American Type Culture Collection whereupon the Accession Number will be added in place of the blank line.

Claims 29-31 are objected to under 37 CFR 1.75©) as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant has canceled claims 29-31 in favor of new claims 41 and 42.

Claims 8, 18 and 20 are objected to because of informalities. Claim 8 has been amended as suggested by the Examiner and claims 18 and 20 have been canceled. Withdrawal of these objections is requested.

The Examiner has rejected claims 6, 11-13, 15-17 and 19-32 under 35 U.S.C. §112, first paragraph as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the invention was filed, had possession of the claimed invention. Applicant has canceled claims 6, 11-13, 15-17 and 19-32. Withdrawal of this rejections is respectfully requested.

Claims 6 and 29-31 are rejected under 35 U.S.C. §112, first paragraph for enablement. Applicant has canceled claim 6 and 29-31 in favor of new claims 41 and 42. Applicant respectfully disagrees with Examiner regarding the unpredictability of the introgression of genes or genes into the genetic background of a different plant. Accordingly, Hallauer, A.R. et al. (1988) "Corn Breeding" Corn and Corn Improvement, No. 18, pp. 463-481,

backcross method of breeding is an important component of most breeding program that counted, in 1981 for 17% of the total breeding effort for inbred line development. It is also said that the complexity of the backcross method depends on type of traits being transferred, but that for single genes, the backcross method is effective and relatively easy to manage. Therefore, Applicant submits that one skilled in the art, i.e., a plant breeder shall readily use the cucumber line of the present invention for backcrossing leading to an 8D-5079 cucumber plant further comprising a single gene conversion. Applicant also would like to point out that applicant, page 29 and 30 of the file application, indeed provided guidance for genes conferring sex determination, improved nutritional or agronomic quality or dominant or recessive allele. Applicant has canceled claims 29-31 in favor of new claims 41 and 42. Withdrawal of this rejection is respectfully requested.

Claims 1-32 are rejected under 35 U.S.C. §112, first paragraph, as containing subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or which is most nearly connected to make and or use the invention. Upon allowance of the claims in this application, the deposit will be made with American Type Culture Collection. As stated in the specification on page 33, the seed deposit is being maintained by Harris Moran Seed Company at their Sun Prairie, Wisconsin facility. The deposit will be available to the Commissioner during the pendency of this application and upon allowance of any claims, deposit of the cucumber seed will be made with the American Type Culture Collection.

The undersigned avers that:

- a) access to the invention will be afforded to the Commissioner during the pendency of the application;
- b) all restrictions upon availability to the public will be irrevocably removed upon the granting of a patent;
- c) the deposit will be maintained in a public depository for a period of 30 years or 5 years after the last request or for the enforceable life of the patent, whichever is longer;
- d) a test of the viability of the biological material at the time of deposit; and

e) the deposit will be replaced if it should ever become inviable or when requested by ATCC.

Accordingly, withdrawal of these rejections is requested.

Claims 1-24 are rejected under 35 U.S.C. §112, second paragraph as being indefinite. Claims 1, 7, 9 and 18 are indefinite in their recitation of a blank line for the ATCC Accession No. As previously mentioned, Applicant acknowledges the requirement for a deposit of biological material. Upon allowance of the claims in this application, the deposit will be made with the American Type Culture Collection and the Accession Number will be added. Accordingly, withdrawal of this rejection is respectfully requested.

Claim 6 is indefinite in its recitation of "wherein said plant is male sterile". Applicant has cancelled claim 6.

Claim 7 is indefinite in the recitation of "capable of expressing". Applicant has amended claim 7 as suggested.

Claim 8 is rejected as indefinite in the recitation of "the tissue culture of claim 7, selected from the group of protoplast and calli, wherein the regenerable cells". Applicant has amended claim 8.

Claim 9 is rejected in the recitation of "is capable of expressing". Applicant has amended claim 9.

Claim 14 is rejected as indefinite in the recitation of "another, different". Applicant has cancelled claim 14.

Claims 18 and 20 have been rejected for being meaningless. Applicant has cancelled claims 18 and 20.

Claims 19, 23, 28 and 32 are indefinite in their recitations of "extended yield pattern", "very dark skin color", "reduced blossom end stripping", "small seed cavity", "small blossom end", "very high yield", "adapted to" and "used to produce hybrids having a maturity between 55 and 62 days. Claims 19, 23, 28 and 32 have been cancelled.

Claim 22 is rejected as indefinite in the recitation of "utilizing plant tissue culture methods to derive progeny". Claim 22 has been cancelled.

Claim 24-26 have been rejected as being indefinite in the recitation of a cucumber plant containing one or more transgenes. Claims 24-26 have been cancelled.

Claim 23 is rejected as indefinite because there are no positive method steps. Claim 23 has been cancelled.

Claims 30 and 31 are rejected as lacking proper antecedent basis for the limitation "the single gene conversion cucumber plant of claim 29". Claims 30 and 31 have been cancelled.

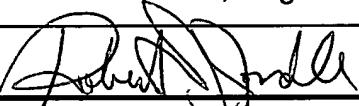
Claim 32 is rejected as being unclear if the second cucumber plant refers to the cucumber plant in line 1 or the first cucumber plant mentioned in line 2. Applicant has cancelled claim 32. Withdrawal of these rejections are respectfully requested.

The Examiner has rejected claims 11-13, 15-17 and 19-32 under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over Walters et al. (1997), HortScience 32:1301-1303). While claims 11-13, 15-17 and 19-32 have been cancelled, Applicant submits that there are numerous differences between the Walter's cucumbers and the present invention. Applicant would like to point out that 8D-5079 is a monoecious slicer cucumber while Lucia Manteo and Shelby are identified as pickling cucumber. Manteo is powdery mildew and scab susceptible while 8D-5079 is resistant. All three, Lucia, Manteo and Shelby are susceptible to angular leaf spot while 8D-5079 is resistant. Withdrawal of this rejection is respectfully requested.

Claims 11-13, 15-17 and 19-32 are rejected under 35 U.S.C. §102(b) as anticipated by or, in the alternative, under 35 U.S.C. §103 as obvious over Wehner (1998, Hortscience 33:168-170). While claims 11-13, 15-17 and 19-32 have been cancelled, Applicant submits that 8D-5079 is an inbred line, whereas as mentioned several times in the Wehner document, NCWBS, NCMBS and NCES1 are populations. Withdrawal of this rejection is respectfully requested.

Attached hereto is a marked-up version of the changes made to the specification by the current amendment. The attached page is captioned "**AMENDMENTS TO CLAIMS.**"

In view of the above amendments and remarks, it is submitted that the claim satisfies the provisions of 35 U.S.C. §§102, 103 and 112 and is not obvious over the prior art. Reconsideration of this application and early notice of allowance is requested.

RESPECTFULLY SUBMITTED,					
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Attachments: Marked-Up Copies of Claims